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REMARKS

The Office Action mailed December 19, 2006 has been received and reviewed. Claims 1-20 are in the case. Claim 20 stands rejected under 35 U.S.C. § 112. Claims 1-5, 9, and 11 stand rejected under 35 U.S.C. § 102(b). Claims 1-20 stand rejected under 35 U.S.C. § 103(a).

By this paper, claims 1, 11, and 16 have been amended, claim 20 has been cancelled, and claim 21 has been added. For the reasons set forth below, claims 1-19 and 21 are believed to be in condition for immediate allowance. Favorable reconsideration of the application in view of the following remarks is, therefore, respectfully requested.

Rejection of Claim 20 Under 35 U.S.C. §112, second paragraph

Claim 20 stands rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention. Specifically, the Office Action finds "carrying..., passing..., and returning... during motion of the vehicle" to be indefinite when included in a non-method claim.

By this paper, claim 20 has been canceled. While claim 21 has been added, it does not include the language rejected by the Office Action. Accordingly, consideration of claim 21 is respectfully requested.

Rejection of Claims 1-5, 9, and 11 Under 35 U.S.C. §102(b)

Claims 1-5, 9, and 11 stand rejected under 35 U.S.C. §102(b) as being anticipated by Safko. However, for a prior art reference to anticipate, every element of the claimed invention must be identically disclosed in a single prior art reference. See MPEP 2131. Moreover, those

elements must be arranged or connected together in a single reference in the same way as specified in the patent claim. *Id.* Safko does not meet this test.

Applicant finds in Safko no disclosure of a flexible member having a first portion substantially completely covering a cargo area and a second portion connecting to the first portion proximate a second end of the cargo area and extending therefrom to pass around the second end to a location of capture thereof between a wheel and a supporting surface. *See* Safko at Figure 1 (lack of a connection is shown between belts 3, 4 and cargo unit 5 proximate the second end of the truck bed) and col. 1, lns. 30-39 (stating that belts are "13 feet in length or the full length [of the truck bed] to the tail gate plus about 7 feet ... [which is] ... sufficiently long that their rear ends may be manually projected underneath the rear tires").

The Office Action admits that Safko lacks this disclosure, but disregards it, arguing that Applicant's claims merely require a second portion having a length sufficient to accomplish the recited arrangement. That is, the Office Action argues that while Safko does not teach the arrangement, it does teach a cargo unit 5 and belts 3, 4, having a length sufficient to accommodate the arrangement, and that is all that is required by Applicant's claims. Accordingly, by this paper, Applicant has amended the claims to affirmatively require the second portion to pass around the second end.

Also, while Safko discloses an alternative embodiment where a mat is used "instead of [a] cargo unit," Applicant finds no teachings or suggestions in Safko indicating that such a mat would be connected any differently than the cargo unit 5. It is pure conjecture for the Office Action to assert that the mat must be connected differently to avoid pulling the mat out from underneath the load. First, Safko's silence on this particular detail more reasonably leads to an opposite conclusion (*i.e.*, that the mat is connected and functions as does the cargo unit, making

further qualification unnecessary). Second, by overlaying the belts 3, 4, the mat would move with the belts 3, 4 and would not be pulled from underneath the load, as asserted by the Office Action. Accordingly, reconsideration is respectfully requested.

**Rejection of Claims 6 and 16-19 Under 35 U.S.C. §103(a)**

Claims 6 and 16-19 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Safko. However, to establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See MPEP 2143. Safko does not meet this test.

With respect to claim 6, as presented hereinabove, Safko does not teach or suggest a flexible member having a first portion substantially completely covering a cargo area and a second portion connecting to the first portion proximate a second end of the cargo area and extending therefrom to pass around the second end to a location of capture thereof between a wheel and a supporting surface. Accordingly, reconsideration of claim 6 is respectfully requested.

With respect to claims 16-19, Safko does not teach or suggest depositing a load directly onto a first portion of a flexible member and then backing a vehicle until a length of the first portion passes under the second end of the vehicle. Figures 1 and 4 of Safko show that cargo unit 5 does not pass under the second end of the vehicle. Moreover, Safko does not teach or suggest that, in the mat embodiment, the mat passes under the second end of the vehicle. Again, it is pure conjecture for the Office Action to assert that the mat embodiment briefly mentioned by Safko must somehow be connected or perform differently than the cargo unit 5. Moreover, such speculation by the Office Action ignores the actual teachings of Safko.

For example, Safko explicitly states that the belts are "13 feet in length or the full length [of the truck bed] to the tail gate plus about 7 feet ... [which is] ... sufficiently long that their rear ends may be manually projected underneath the rear tires." See Safko at col. 1, lns. 30-39. Applicant does not find that Safko ever backs away from, modifies, or limits this express teaching. This teaching must, therefore, apply to both the cargo unit 5 and mat embodiments.

In view of the foregoing, the conjectures and speculations of the Office Action evidence impermissible hindsight based on Applicant's disclosures and teachings, not any proper teachings or suggestions found in the prior art. Reconsideration of claims 16-19 is, therefore, respectfully requested.

**Rejection of Claim 7 Under 35 U.S.C. §103(a)**

Claim 7 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Safko in view of Pierce. However, to establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See MPEP 2143. The combination of Safko and Pierce does not meet this test.

As presented hereinabove, Safko does not teach or suggest a flexible member having a first portion substantially completely covering a cargo area and a second portion connecting to the first portion proximate a second end of the cargo area and extending therefrom to pass around the second end to a location of capture thereof between a wheel and a supporting surface. Adding the teachings of Pierce does not remedy the deficiencies of Safko. Pierce merely teaches a rear bumper rolling loader. The combination still does not have all the recited elements required. Accordingly, reconsideration of claim 7 is respectfully requested.

**Rejection of Claims 8 and 10 Under 35 U.S.C. §103(a)**

Claims 8 and 10 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Safko in view of Pierce and Kellogg. However, to establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *See* MPEP 2143. The combination of Safko, Pierce, and Kellogg does not meet this test.

As presented hereinabove, Safko does not teach or suggest a flexible member having a first portion substantially completely covering a cargo area and a second portion connecting to the first portion proximate a second end of the cargo area and extending therefrom to pass around the second end to a location of capture thereof between a wheel and a supporting surface. Adding the teachings of Pierce and Kellogg does not remedy the deficiencies of Safko. Both Pierce and Kellogg merely teach rolling loaders. Required elements recited in the claims are still lacking in the proposed combination. Accordingly, reconsideration of claims 8 and 10 is respectfully requested.

**Rejection of Claims 1-5, 9, 11, and 20 Under 35 U.S.C. §103(a)**

Claims 1-5, 9, 11, and 20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over VanMatre in view of Safko. However, to establish a *prima facie* case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *See* MPEP 2143. In the present case, there can be no suggestion or motivation to combine because the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified. *See* MPEP 2143.01;

see also *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). Accordingly, Safko and VanMatre are not sufficient to render the claims *prima facie* obvious. *Id.*

Safko operates on the principle of the dumping force being provided by an unmodified, stock vehicle. Safko only requires a stock vehicle capable of backing over a belt to provide the dumping force. Safko translates the load longitudinally without lifting it. In contrast, VanMatre operates on the principle of the dumping force being provided by an independent and dedicated drive system. The device lifts and tumbles the cargo toward the rear. Accordingly, VanMatre requires that a vehicle be customized to include various rails 11 and a specially designed drive mechanism and motor 30 to provide the lifting and dumping forces and the energy required. Thus, Safko and VanMatre employ different principles of operation and are insufficient to render the claims *prima facie* obvious. See MPEP 2143.01.

**Rejection of Claims 7, 8, and 12-15 Under 35 U.S.C. §103(a)**

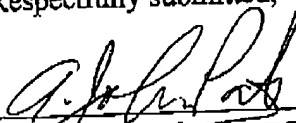
Claims 7, 8, and 12-15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over VanMatre in view of Safko and Kellogg. However, to establish a *prima facie* case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. See MPEP 2143. In the present case, as presented hereinabove, there can be no suggestion or motivation to combine because the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified. See MPEP 2143.01; see also *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). Accordingly, Safko and VanMatre are incompatible and cannot properly be combined to render the claims *prima facie* obvious. *Id.*

As presented hereinabove, Safko operates on the principle of the dumping force being provided by an unmodified, stock vehicle. VanMatre operates on the principle of the dumping force being provided by an independent and dedicated drive system. Adding in the teachings of Kellogg does not remedy the incompatibility of VanMatre and Safko. Thus, there is no suggestion or motivation to combine the teachings of VanMatre, Safko, and Kellogg.

In the event that the examiner finds any remaining impediment to the prompt allowance of any of these claims, which could be clarified in a telephone conference, the examiner is respectfully urged to initiate the same with the undersigned.

DATED this 19<sup>th</sup> day of March, 2007.

Respectfully submitted,

  
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